**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

_____          CIVIL ACTION NO. 04-11730 NG
                                                )
GEORTO, INC.,                                   )
            Plaintiff,                          )
                                                )
      v.                                        )
                                                )
WILLIAM GATEMAN, INDIVIDUALLY  )
and as TRUSTEE OF 200 UNION           )
STREET REALTY TRUST                      )
                                                )
            Defendant,                          )
            Third Party Plaintiff, and          )
            Third Party Defendant-in-           )
            Counterclaim                        )
                                                )
ROBERTS CORPORATION                     )
                                                )
            Third Party Defendant,              )
            and Third Party Plaintiff-in-       )
            Counterclaim                        )
_____)


## DEFENDANT WILLIAM GATEMAN'S EMERGENCY MOTION TO CONSOLIDATE ACTIONS


       NOW COMES Defendant, William Gateman ("Gateman"), pursuant to Fed. R. Civ. P.

42(a), and hereby moves this Honorable Court to consolidate the above matter with Civil Action

No. 06-11034 and grant the Defendant a continuance in order to conduct discovery in the

consolidated action.  In support of his Motion, Gateman submits the Affidavit of Mark McGrath,

dated August 9, 2006, the Affidavit of Jackson Gateman, dated August 10, 2006, and also relies

upon submissions previously submitted.

Plaintiff Georto, Inc. ("Georto") filed this lawsuit against Gateman on August 4, 2004.

Georto has asserted claims against Gateman for breach of warranty (Count One), fraud (Count

Two), negligent misrepresentation (Count Three), breach of the covenant of good faith and fair

dealing (Count Four), and violation of Chapter 93A of the Massachusetts General Laws (Count

Five). Georto has also filed a second lawsuit against Gateman, as well as his father, Jackson

Gateman, dated June 13, 2006, but not served upon Gateman until August 8, 2006, 06-11034

NG. This second lawsuit involves common questions of law and facts. The facts necessary to

develop and resolve questions raised by the Plaintiff are virtually identical in each case, and

consolidation would not only be appropriate but involve only slight delay in a trial date, as

relatively little, albeit significant, discovery would need to be conducted. Without consolidation,

trial on the second action would large duplicate the discovery, pre-trial and trial on the first

actions, currently scheduled for a five day trial on August 21, 2006.

Consolidation under Rule 42(a) is permitted as matter of convenience and economy in

administration; consolidation does not merge separate actions into single cause, does not change

rights of parties, and does not make those who are parties in one action parties in another.

Abrams v. Occidental Petroleum Corp. (1968, SD NY) 44 FRD 543; Feldman v. Hanley (1969,

SD NY) 49 FRD 48. Moreover, judicial economy generally favors consolidation. Switzenbaum

v. Orbital Sciences Corp. (1999, ED Va) 187 FRD 246.

Consolidation of cases pursuant to F.R.C.P. 42(a) does not merge suits into single cause,

or change rights of parties, or make those who are parties in one suit parties in another. Cabrini

Dev. Council v. LCA Vision, Inc. (2000, SD NY) 197 FRD 90. Consolidation is also desirable

to promote "trial convenience and economy in administration." Schacht v. Javits, (1071 SD NY)

53 FRD 321, 324-25.

The foregoing facts show that this is an appropriate situation for consolidation. The

pleadings all allege damages arising out of the same alleged violations. Common questions of

law and fact are present. The Court's discretionary power to order consolidation is clear, and

consolidation would be the most economical and expeditious method of resolving these two

matters without needless duplication of discovery and costs to the respective parties.

WHEREFORE, for the reasons above and others to be advanced at the time of hearing on

this matter, the Defendant, William Gateman respectfully requests this Court to grant its Motion

for Consolidation.

Respectfully submitted,
William Gateman,
Individually and as Trustee
By his Attorney,

_____
Mark P. McGrath, BBO #642913
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CERTIFICATE OF SERVICE

I hereby certify that this document was this day served upon all counsel of record by electronic
filing, this 10th day of August, 2006.

SIGNED under the pains and penalties of perjury.

Dated: August 10, 2006

_____
Mark P. McGrath